

## Leadership Institute Branch Legal Training Section



Testimony and Reports

Roll Call Training  
2015-4



# Objective

At the end of this review, the viewer will be able to:



Understand the use of a report or other writing to refresh recollection in court or other official proceedings.

# KRE Rule 612

The Kentucky Rules of Evidence provides for a witness to be allowed to refresh memory of forgotten details by using a writing.

A “writing” would include a citation, a supplemental report, personal notes or any other document that might include details needed in testimony.



# KRE Rule 612 Writing used to refresh memory

*Except as otherwise provided in the Kentucky Rules of Criminal Procedure, if a witness uses a writing during the course of testimony for the purpose of refreshing memory, an adverse party is entitled to have the writing produced at the trial or hearing or at the taking of a deposition, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal.*

# Reading vs. Refreshing

Remember, it is never proper to simply read from your report, it should only be used to *refresh* your memory on details, especially items like birthdates, addresses and the like.

It should (and likely will) draw an objection from the defense, as well, and the judge will tell you to stop reading from the report.



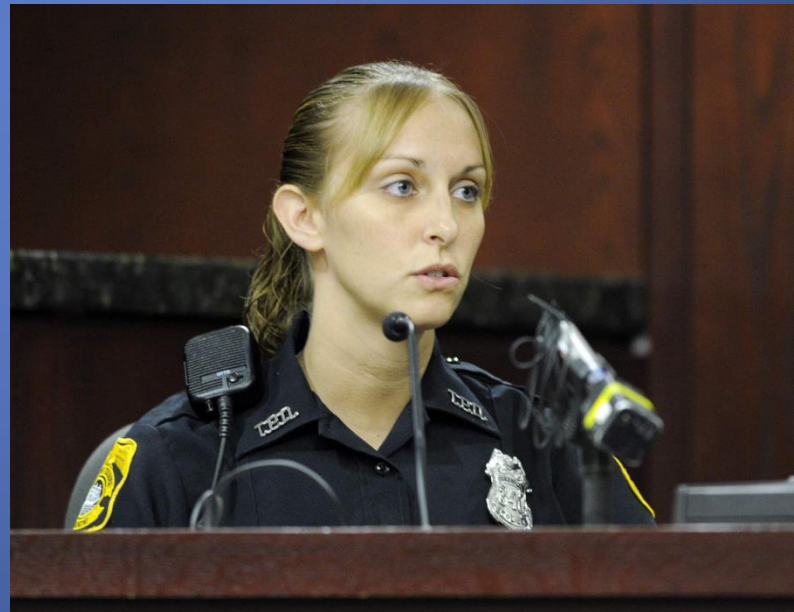
# Instead ...

Prior to any proceeding in which you are going to testify, grand jury, hearings, depositions and trials, for example, you should always go over your paperwork and ensure that you are confident in your narrative, that you “know your case.”

It is “your case” and no one should know the details inside out as well as you do.

# REMEMBER!

Your citation or report is not evidence, it is simply there to record and document the details – what you know is the evidence (and testimony) that is expected.



Preferably, you should carry nothing with you to the witness stand, any paperwork you might need to refresh your recollection, such as your citation, supplemental report or other document, should be in the possession of the prosecutor.

As jurisdictions differ in procedure, ask your prosecutor as to whether you should carry anything at all to the stand with it, or if you should ask for a copy to refresh your memory if necessary.



Either way ...

If you need the document to refresh your recollection on a detail, ask for it (if you do not have it), refer to it, and then put it down and **LOOK UP!!!**



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# Eye Contact

Making eye contact with a jury is the best way to ensure that they know you are a credible and knowledgeable witness!

And you can't do that if you are looking down at your paperwork all of the time!



# Remember ...

Before you testify, go over all your paperwork in a case, since it may have been quite a while since the incident occurred.

During testimony, do not lean on your paperwork, know your case. Do not hesitate to check details, especially dates, times and numbers, but do not read from the document – only use it to refresh your memory and then ....

# LOOK UP!



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# Questions?

If you have any questions concerning this presentation, please feel free to contact the Legal Training Section in one of the following ways:

Website: [www.docjt.ky.gov/legal](http://www.docjt.ky.gov/legal)

Phone: 859-622-3801

Email: [docjt.legal@ky.gov](mailto:docjt.legal@ky.gov)